

REMARKS

This amendment is submitted in response to the Official Action mailed September 27, 2004. In view of the above claim amendments and the following remarks, reconsideration by the Examiner and allowance of the application is respectfully requested.

Applicant has discovered that antibiotic supplements in animal feeds can be reduced or eliminated by replacing some or all of the antibiotic feed supplements with anti-bacterial quantities of high lauric acid oils. Accordingly, Claim 10 has been amended to define Applicant's inventive contribution in Jepson format. That is, Claim 10 has been amended to recite an animal feed composition comprising crude protein and an antibiotic supplement, in which all or a portion of the antibiotic supplement is replaced with an anti-bacterial amount of an anti-bacterial fatty acid component, i.e., a high lauric acid natural oil, or a derivative thereof having a high lauric acid content. This is disclosed throughout the PCT Specification, particularly at page 2, lines 3-6, in the Examples, and also in original Claim 19, and therefore does not introduce new matter.

Claim 13 has been amended to conform to the language of amended Claim 10, to read "essentially free of antibiotic supplements," instead of "essentially free of other antibiotics." This also does not introduce new matter.

For reasons which are submitted below, the claims are believed to be in condition for allowance. The amendment to Claim 10 better defines the subject matter of the invention in a manner that distinguishes the claims over the prior art cited, thereby resolving the concerns raised by the Examiner. Accordingly, reconsideration is respectfully requested.

Turning to the Official Action, Claims 14, 25 and 26 were indicated by the Examiner to be directed to allowable subject matter, which is gratefully acknowledged. However, Claims 10-13, 38 and 45 were rejected either under 35 U.S.C. §102(b) as being anticipated by Ohzeki et al., or under 35 U.S.C. §103(a) as being obvious in view of Ohzeki et al. Claims 15-18 and 51 were rejected "because they depend upon rejected claims."

Claims 10, 11 and 13 were rejected in view of Ohzeki et al. under 35 U.S.C. §102(b). Ohzeki et al. was cited as disclosing a composition comprising a crude protein product and an oil mixture containing palm oil and rapeseed oil, which the Examiner considered to be high lauric acid oils. This rejection is respectfully traversed in view of the above claim amendments for the reasons set forth hereinafter.

Ohzeki, et al. is directed to the preparation of a dairy-type spread or dessert topping that can be squeezed from a tube, in which an aqueous emulsion of non-fat milk solids and/or soybean proteins and fats is subjected to lactic fermentation. In other words, Ohzeki, et al. discloses a cheese-like substance for human consumption.

The examples disclose soybean protein concentrates, with a crude protein content of 70-80%, being dissolved in water with hydrogenated rapeseed oil in one example and a mixture of fractionized palm oil and rapeseed oil in the other example. However, the fatty acid component is not anti-bacterial because the mixture immediately undergoes *Lactobacillus* fermentation. Growing bacteria to produce **lactic acid** is the objective of Ohzeki et al. not inhibiting bacteria with **lauric acid**. There is a tremendous difference between **lactic acid** and **lauric acid**.

To grow bacteria and produce **lactic acid**, the oils used and the quantities employed by Ohzeki et al. do not provide sufficient quantities of **lauric acid** to have an anti-bacterial effect in the protein-oil mixture. Harming bacteria was never the objective of Ohzeki et al., who are fermenting a cheese-like dairy-type spread or dessert topping and not trying to reduce or eliminate the use of antibiotic supplements in animal feed. Anti-bacterial quantities of **lauric acid** would inhibit fermentation and fail to produce a suitable dessert topping.

To emphasize this distinction, Claim 10 has been rewritten in Jepson format to define an animal feed composition containing antibiotic supplements in which some or all of the antibiotic supplements have been replaced with an anti-bacterial amount of an anti-bacterial fatty acid component containing a high lauric acid natural oil, or a derivative thereof having a high lauric

acid content. This is not anticipated by the cheese-like substances of Ohzeki et al., in which bacteria readily grow.

Nor are claims 10, 11 and 13 obvious in view of Ohzeki et al. under 35 U.S.C. §103(a). There is no teaching or suggestion in Ohzeki et al. that high lauric acid natural oils or derivatives thereof having a high lauric acid content are anti-bacterial. Instead, Ohzeki et al. teaches against this by disclosing compositions containing oils having a lauric acid content that readily undergo *Lactobacillus* fermentation. One would not predict from the teachings of Ohzeki et al. that when sufficient quantities of lauric acid are used, bacterial growth is inhibited. In fact, modifying Ohzeki et al. to use anti-bacterial quantities of lauric acid inhibits *Lactobacillus* fermentation and renders the Ohzeki et al. compositions unsuitable for their intended purpose, i.e., consumption as a dairy-type spread or dessert topping.

By re-writing Claim 10 in Jepson format so that it is now directed to an animal feed in which some or all of the antibiotic supplements have been replaced with an anti-bacterial amount of an anti-bacterial fatty acid component containing a high lauric acid natural oil, or a derivative thereof having a high lauric acid content, this rejection of claims 10, 11 and 13 as being anticipated by Ohzeki et al. under 35 U.S.C. §102(b) has thus been overcome. Reconsideration by the Examiner and withdrawal of this rejection is therefore respectfully requested.

Next, Claims 12, 38 and 45 were rejected by the Examiner under 35 U.S.C. §103(a) as being obvious in view of Ohzeki et al. According to the Examiner, the specific weight percentages recited in thesees claims are determinations within the level of ordinary skill. This rejection is respectfully traversed in view of the above claim amendments for the reasons set forth hereinafter.

This is not a matter of routine optimization. Ohzeki et al. disclose compositions containing lauric acid that readily undergo *Lactobacillus* fermentation. This will not occur within the anti-bacterial weight percentages of claims 12, 38 and 45. As noted above, Ohzeki et

al. desire bacterial growth, and teach against the use of anti-bacterial quantities of lauric acid. Modifying Ohzeki et al. to use anti-bacterial quantities of lauric acid inhibits *Lactobacillus* fermentation and renders the Ohzeki et al. compositions unsuitable for consumption as a dairy-type spread or dessert topping.

Claims 12, 38 and 45 depend from Claim 10 and thereby patentably define over Ohzeki et al. under 35 U.S.C. §103(a) by virtue of the features of Claim 10 discussed above. By amending Claim 10, this rejection of Claims 12, 38 and 45 has also been overcome. Reconsideration by the Examiner and withdrawal of this rejection is therefore also respectfully requested.

Finally, Claims 15-18 and 51 were rejected because they depend upon rejected claims. This is an incorrect statement of the law. For a rejection under 35 U.S.C. §102(b) or §103(a) to be proper, all claim limitations must be met. Dependent claims introduce new limitations, the teaching or suggestion of which by the prior art must be identified by the Examiner.

In the present application, while Claim 18 merely recites intended purposes for the animal feed, Claims 15 – 17 and 51 recite antibiotic combinations that are not even remotely taught or suggested by Ohzeki et al. and independently define thereover. Regardless, Claims 15 - 18 and 51 depend from Claim 10 and thereby patentably define over Ohzeki et al. by virtue of the features of Claim 10 discussed above. Favorable consideration by the Examiner and allowance of Claims 15 – 17 and 51 is therefore also respectfully requested.

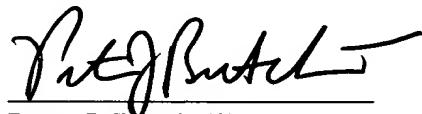
In view of the above claim amendments and the foregoing remarks, this application is now in condition for allowance. Reconsideration is respectfully requested. However, the Examiner is requested to telephone the undersigned if there are any remaining issues in this application to be resolved.

Applicant: B. Teter
Application No. 09/720,136

Docket No. UMARY3

Finally, if there are any additional charges in connection with this response, the Examiner is authorized to charge Applicant's deposit account number 19-5425 therefor.

Respectfully submitted,



Peter J. Butch, III
Reg. No. 32,203

Synnestvedt, Lechner & Woodbridge LLP
112 Nassau Street
P.O. Box 592
Princeton, NJ 08542-0592
Tele: (609) 924-3773
Fax: (609) 924-1811

M:\PButch\Rutgers University\P-23687-A.USA\PATENTOFFICE\06-04-04 Amendment.wpd